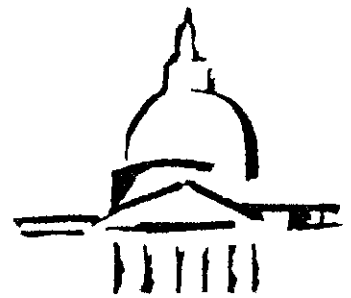


**Remarks for Senate Committee on Public Health, Senior  
Issues, Long Term Care and Privacy**  
Regarding Senate Bill 393  
*By Representative Kitty Rhoades*  
January 23, 2008



**KITTY  
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**STATE REPRESENTATIVE**

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Thank you for having a public hearing on Senate Bill 393 (SB 393) and providing me the opportunity to testify in support of this proposal.

**What the Bill does**

SB 393 requires personal care worker agencies that place a personal care worker in the home of a private individual and are currently required to conduct a personal background check to disclose the results of a criminal background check every two years. This proposal does not enact broad changes to Wisconsin's Caregiver Background Check program, rather the proposal requires the disclosure of criminal background checks on personal care workers that are already required under current law.

SB 393 requires personal care worker agencies that place a personal care worker in the home of a private individual to disclose the results of a criminal background check every two years.

Under current law, there is a narrow list of criminal convictions that would prohibit an applicant from being a caregiver in a DHFS-run facility or in a Medicaid waiver program. (Wis. Stat. 50.065) *This list includes, 1<sup>st</sup> degree homicide, 1<sup>st</sup> degree reckless homicide, felony murder, 2<sup>nd</sup> degree homicide, assisting suicide, felony battery, sexual exploitation by a therapist, 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree sexual assault, misdemeanor or felony abuse of vulnerable adults, 1<sup>st</sup> degree sexual assault of a child, or intentional physical abuse of a child that causes great bodily harm.*

Current law does not address many other convictions that could appear on a person's criminal background check such as *battery, burglary, or theft*. Rather, current law affords the agency employing a caregiver sole discretion over whether convictions such as these substantially relate to the job of providing care to a client in their private residence.

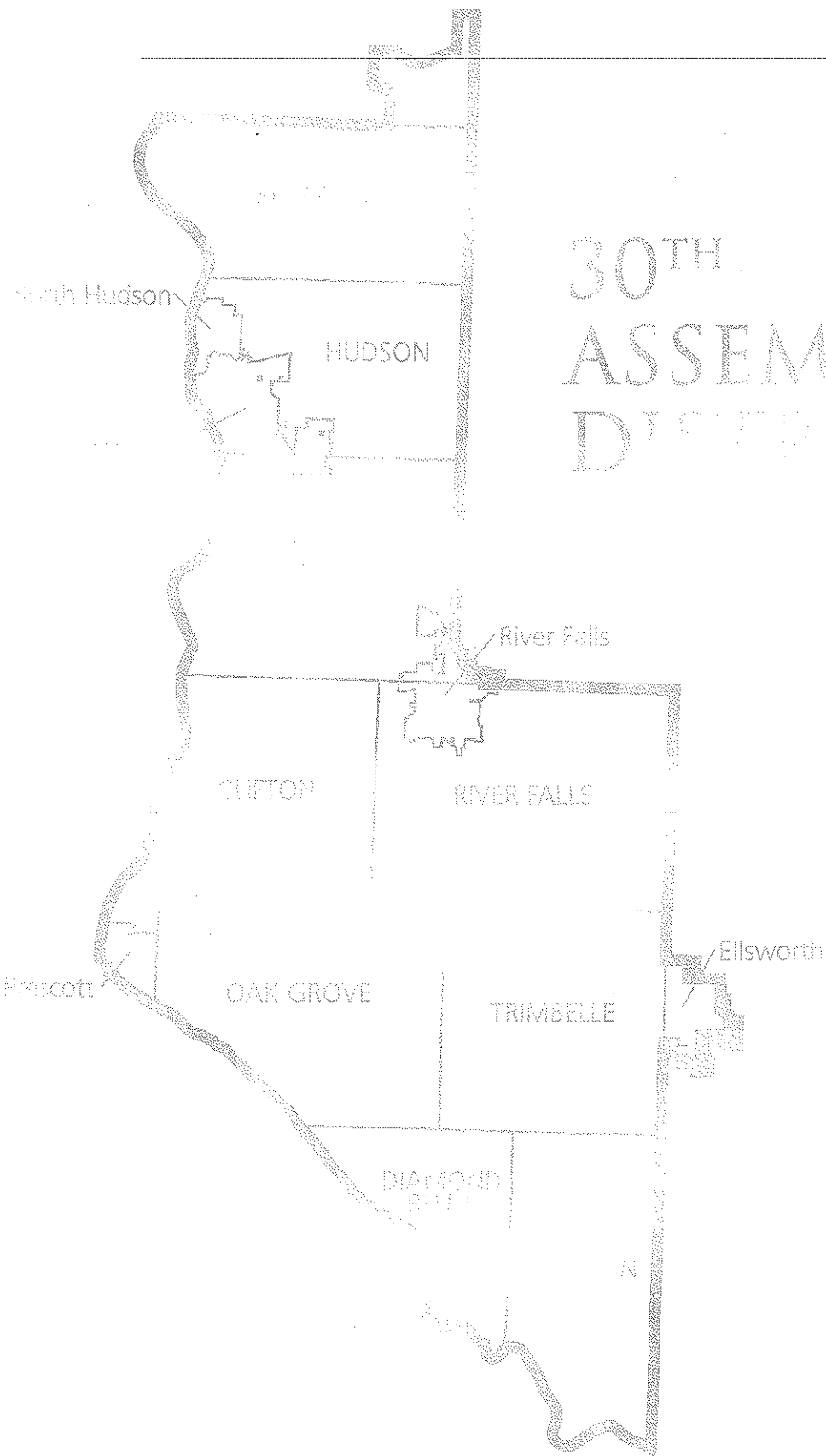
**Right to Know**

As increasing numbers of seniors and individuals with disabilities obtain care in their homes, it is absolutely critical they not be required to jeopardize their safety, the safety of their loved ones, or the security of their possessions. In fact, the elderly and individuals with disabilities have a right to know the criminal background of people sent into their homes to provide care.

**Public Information**

The information required to be disclosed to a client in SB 393 is not privileged information; it is public information. However, many individuals receiving care do not know this information is available or how to access it. The agencies affected by this bill are already required to conduct a criminal background check.

When a person requires care in their home, they should not have to sign away their right to know who is coming into their home. Individuals receiving care in their homes should be involved in knowing the criminal background of caregivers assigned by agencies to enter their home and provide personal care services. If an individual is uncomfortable with something on the public criminal background check, then this proposal enables a conversation to occur between the agency and client receiving care.



# 30TH ASSEMBLY DISTRICT



State of Wisconsin  
**Department of Health and Family Services**

Jim Doyle, Governor  
Kevin R. Hayden, Secretary

January 23, 2008

TO: Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy  
FROM: Katie Plona, DHFS legislative liaison  
RE: Senate Bill 393

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Good afternoon. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. Sen. Carpenter and committee members, thank you for the opportunity to testify for information only on Senate Bill 393.

First, I would like to say that the Department supports the intent of Sen. Carpenter's and Rep. Rhoades' legislation to require agencies that place personal care workers in the homes of vulnerable persons to provide the results of the worker's background check. This is another tool to empower consumers by making them aware of a personal care worker's background, such as theft or battery, which may give them cause for concern to have the caregiver working in their home.

I would like to use my testimony to focus on some questions that arise with the legislation as currently drafted and offer to work with the authors to address each of them.

1. Under current law, personal care workers are not always covered in the state's Caregiver Background Check program. The Caregiver Background Check law requires DHFS-approved entities to run background checks on all of their employees. Personal care worker agencies are not DHFS-approved entities. For example, home health care agencies are covered under the Caregiver Background Check statutes, but independent, non-home health agency and personal care worker agencies are not.

This results in a situation where a personal care worker will receive a background check if a home health care agency employs her but not if a non-covered entity, such as a temp agency like Manpower, Inc. or an agency that exclusively provides personal care workers, employs her.

The other nuance is that agencies that provide personal care services are required to run background checks on their employees as a condition of serving Medicaid-waiver program participants, regardless of whether they are licensed by DHFS. So, again, you may have some agencies that are running background checks because they participate in the Medicaid-waiver reimbursement program and other agencies with private-pay clients that do not run background checks.

DHFS is able to enforce the Caregiver Background law through license requirements, complaints and surveys, and we have some tools to enforce the Medicaid-waiver program provision through adherence to state-county contracts.

With all of this being said, I do want to note that many agencies that are not required to do background checks do them anyway as part of their hiring processes. This is a process we encourage all entities, licensed or otherwise, to utilize to further protect vulnerable consumers.

2. SB 393 reads that "a personal care agency that employs or contracts with a caregiver to serve as a personal care worker in a private residence shall disclose to the client, or to his or her guardian, information regarding the caregiver that is obtained by the personal care worker agency." We have a question about whether this means that agencies that currently do not conduct background checks on their personal care workers won't fall within the scope of SB 393, or whether this language means they will have to start running background checks so they have information to disclose to the client.
3. The term "personal care worker agency" is defined in statute as having the meaning specified by DHFS in rule. In rule, DHFS defines personal care worker agency as being a home health agency that meets certain criteria. For the purpose of achieving the authors' intent and to clarify the application of SB 393, DHFS recommends that, rather than using the term "personal care work agency" in the bill, it may be more inclusive to define and use the term "personal care services." That way, any agency, business or organization that provides personal care services must adhere to the disclosure provisions in SB 393.
4. SB 393 requires disclosure of background checks to clients once every two years. The Caregiver Background Check law requires an employer to run a check on each employee at the time of new employment and once every four years. DHFS believes there should be consistency in background checks amongst all providers. Arguments can be made to do background checks for all caregivers once every two years and DHFS would like to be involved in any discussions to do that. But, the main point of my comments on this item is to say that DHFS believes whatever the requirement is for one caregiver should be the same for all caregivers.

Thank you again for the opportunity to testify on SB 393. Again, DHFS would like to work with the bill's authors and others interested in the legislation to address these questions. We think sharpening the definitions in the bill will clarify the authors' intent and will help the Department and providers follow it. I'm happy to take any questions committee members may have.



## Testimony

**To:** Senator Tim Carpenter, Chair  
Members of the Senate Committee on Public Health,  
Senior Issues, Long-Term Care and Privacy  
**From:** LuAnne Barnet, President  
**Date:** Wednesday, January 23, 2008  
**Re:** Concern with Passage of Senate Bill 393 as Currently Drafted

First, I want to apologize to the Chair and Committee members for not being able to attend today's public hearing on SB-393 in person. The 24-hour public hearing notice did not present sufficient time for me to find a replacement to cover my shift, nor did it allow time for one of our personal care workers to travel to the City of Madison to testify at the hearing.

Please accept my apologies and our written testimony on this important issue.

The Residential Services Association of Wisconsin (RSA Wisconsin) is a not-for-profit membership and service organization comprised of operators of all community living arrangements and interested agencies and citizens throughout the State of Wisconsin.

It is the philosophy of RSA Wisconsin to encourage and endorse the provision of quality services in a homelike setting to individuals in need of transitional services, to aid them in achieving the maximum level of independent living possible.

RSA Wisconsin has identified several issues of concern that we are asking the Committee to consider. RSA Wisconsin recognizes the intent of the authors of this legislation and understands their overall motivation to improve Wisconsin's long-term care system. To that endeavor, RSA Wisconsin would like to work with the authors and the committee members to improve the bill to deal with the concerns we have identified below.

RSA Wisconsin does support the existing Wisconsin Caregiver Background Check Law. However, we are concerned with the divergence between the background check regulation and notification requirements of Personal Care Agencies \ Personal Care Workers as compared to the vast majority of other types of providers in Wisconsin's healthcare system.

If this legislation would benefit the consumer of Personal Care services the question must be posed, should this legislation be expanded to all other types of healthcare providers and direct caregivers?

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### **RSA Wisconsin**

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### Concerns \ Questions:

- **Two-Year vs. Four-Year Criminal Background Checks.** What is the intent or reasoning behind the requirement of performing criminal background checks every 2-years for direct caregivers employed by a personal care agency as compared to the 4-year Caregiver Criminal Background Law requirement on other healthcare providers?
- **State Share of Costs Associated with Unfunded Mandate.** The Wisconsin Legislature has been unable to provide adequate reimbursement under CIP, COP, Community Aids and other Medicaid Waiver programs for providing care services. With the imposition of another mandate and our struggle to provide living wages to persons who provide actual hands-on care, would the legislature consider sharing the costs of these increased number of background checks?
- **Release of Personal Information that does not Correlate to Duties.** Why does this legislation go beyond the existing Criminal Background Check Law and Wisconsin's Fair Employment Act in requiring the release of information that would have no direct correlation to the duties and responsibility of being a direct caregiver.

SB-393 requires that "any information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to serve as a caregiver entity".

- **Job Discrimination – Employer Liability.** Wisconsin's Fair Employment Act prohibits discrimination because of a criminal record or pending charge; however, it is not discrimination to decline to hire or license a person based on the person's arrest or conviction record if the arrest or conviction is substantially related to the circumstances of the particular job or licensed activity.

Would the employer be at risk of actual or perceived job discrimination, since what SB-393 requires the Personal Care Agency to report to the client goes beyond the protection of the Wisconsin Fair Employment Act?

At this time RSA Wisconsin cannot support the passage of SB-393 as currently drafted. However, we are committed to quality care and again reiterate our desire to work with the authors and the committee members to improve the bill to deal with the concerns we have identified.

If you should have any questions or if you would like to discuss this matter further, please feel free to contact me at the number provided.

Thank you.

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### **RSA Wisconsin**

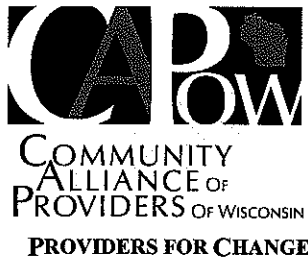
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**Testimony**

**To: Senator Tim Carpenter, Chair**

**Senate Committee on Public Health, Senior Issues, Long-Term  
Care and Privacy**

**From: Bob Glowacki, President**

**Date: Wednesday, January 23, 2008**

**Re: Concerns with AB-698 and SB-393 as Currently Drafted**

The Community Alliance of Providers of Wisconsin (CAPOW) exists to achieve our mission: to improve the wages, benefits, recruitment, retention, and public awareness of direct service professions to enhance the quality of community-based services for people with developmental disabilities. CAPOW believes that people with disabilities and their support staff enrich our community and that direct care professionals deserve to earn wages and benefits which reflect the value of the services they provide.

CAPOW leads the advancement of community-based services that support people with disabilities in their pursuit of meaningful lives. We are a network of providers, supporting over 4500 people with disabilities, and representing 4500 direct care workers, and 2500 guardians. Our members provide services through CIP1A, CIP1B, COP, TBI, and CSLA. CAPOW is committed to assuring that Wisconsin has a viable private provider sector to promote consumer choice, a strong workforce, adequate funding, and appropriate regulation.

**Concerns with Assembly Bill 698 and Senate Bill 393**

CAPOW supports initiatives to improve Wisconsin's long-term healthcare system and would like to extend to the authors of this legislation our commitment to work with them toward a solution that promotes quality care protections to all healthcare recipients by all types caregivers.

CAPOW members have voiced several concerns with respect to Assembly Bill 698 and Senate Bill 393.

Please note that our members do not oppose abiding by Wisconsin's existing Caregiver Background Check Law. Rather, we are concerned that AB-698/SB-393 will treat personal care worker agencies and their direct caregivers much differently than other healthcare providers. In addition, this legislation may not provide the agencies and the actual personal care workers the same rights to rehabilitation review and anti-discrimination protections as afforded under the existing Wisconsin Caregiver Background Check Law.

**WORKFORCE DEVELOPMENT + LIVING WAGE =  
QUALITY SERVICES FOR PEOPLE WITH DISABILITIES**



First, it is important to understand what entities are currently covered under Wisconsin's Caregiver Background Check Law.

- Emergency Mental Health Service Programs, Mental Health Day Treatment Services for Children, Community Mental Health, Developmental Disabilities, AODA Services, Community Support Programs, Community Based Residential Facilities, 3-4 Bed Adult Family Homes, Residential Care Apartment Complexes, Ambulance Service Providers, Hospitals, Rural Medical Centers, Hospices, Nursing Homes, Facilities for the Developmentally Disabled, *Home Health Agencies (including those that provide personal care services)*, Treatment Foster Care, Family Child Care Centers, Group Child Care Centers, Residential Care Centers for Children and Youth, child Placing Agencies, Day Camps for children, Family Foster Homes for Children, Group Homes for Children, Shelter Care Facilities for Children, Certified Family Child Care and Child Care Providers contracted through Local School Boards.

**Concerns and Questions to Consider:**

Under current law, an entity that provides direct care or treatment services must obtain certain background information regarding prospective caregivers every four years.

- Why are personal care agencies being treated differently than other healthcare providers with respect to 2-year versus 4-year background checks?
- Why are personal care providers being treated differently than other healthcare providers with respect to informing clients\patients of "any (employee) information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to serve as a caregiver entity"

Unlike other long-term care providers, personal care providers would be required to release information that would have no direct correlation to the duties and responsibility of being a direct caregiver.

- Wisconsin's Fair Employment Act, ss. 111.31 – 111.395, Wisconsin Statutes, prohibits discrimination because of a criminal record or pending charge; however, it is not discrimination to decline to hire or license a person based on the person's arrest or conviction record if the arrest or conviction is substantially related to the circumstances of the particular job or licensed activity.

However, under AB-698 and SB-393 personal care agencies must provide to clients "any (employee) information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to serve as a caregiver entity". This information must be provided to the client, even if it is not substantially related to the circumstances of the particular job or licensed activity.

CAPOW members are concerned with employer liability matters resulting from actual or perceived job discrimination caused by the release of this personal information. The bill as currently drafted does not provide for employer protection, employer immunity or employee rehabilitation review.

If you should have any questions or if you would like to discuss this matter further, please feel free to contact me at the number provided.





# Wisconsin Personal Services Association, Inc.

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## WPSA Comments on Assembly Bill 698 and Senate Bill 393 Background Checks for Personal Care Workers

The Wisconsin Personal Services Association (WPSA) is a coalition of personal care providers represented by private agencies, independent living centers, home health agencies, county departments, and other interested parties from every county in the State of Wisconsin. This association represents over 11,000 consumers who rely on personal care services and other in-home services in order to live independently in their residences. WPSA also represents as many personal care workers as consumers, hundreds of registered nurses and other support staff who work to provide quality, consumer-centered personal care services to persons with disabilities and the elderly.

WPSA appreciates the opportunity to comment on Assembly Bill 698 and Senate Bill 393 – Background Checks for Personal Care Workers. Like you, WPSA is very concerned about and committed to keeping our consumers out of harm's way by ensuring that personal care workers are qualified and competent in all employment areas. To this end, WPSA supports the current Wisconsin Criminal Background Check Law which requires long-term care providers to obtain background information on caregivers every four years.

However, WPSA has concerns about this proposal for the following reasons:

- This bill requires personal care worker agencies to obtain updated background information regarding its caregivers every two years. The current law requires long-term care providers to obtain updated background information regarding caregivers every four years. The criteria for background checks for long-term care providers should be the same for personal care workers as for the many other caregivers working for long-term providers, such as home health nurses, home health aids and private duty nurses. There would be inconsistency for many long-term care providers that would be required to update background checks every four years and personal care providers that would be required to update background checks every two years.
- The current state background check requirements are working adequately as evidenced by the data from the Wisconsin Fingerprinting Background Pilot Program that ended last year whereby Wisconsin providers did not have any substantial fingerprinting criminal background "hits" to warrant more stringent background law requirements. The current law seems to be working well to identify direct care workers with undesirable criminal backgrounds.
- In the Legislative Reference Bureau analysis of this bill, it says that "this bill provides that a personal care worker agency that employs or contracts with a caregiver to work in a private residence must disclose to the client, or to his or her

guardian, any information the agency obtains concerning the caregiver's criminal history or history of child abuse or neglect, abuse or neglect of a client, misappropriation from a client, or denial of licensing or certification to service as a caregiver entity." Criminal history is a listing of all arrests and charges which includes misdemeanor charges. Providers would be put in a position of releasing information that would have nothing to do with the job duties and/or responsibilities of care giving (example: some traffic violations can be misdemeanors).

- WPSA believes this bill may not help in the very rare cases of abuse/neglect/theft such as the case identified in the Wisconsin State Journal that was attached to the proposal's circulation memos. The fact is that the caregiver in that article was not employed by a personal care agency; she was hired and paid directly by the consumer.
- There may be employment discrimination issues involved. For example, can a provider agency refuse to hire an individual based upon criminal history unrelated to the caregiver law? If clients would not want a caregiver with a history of any kind, are there employment criteria that specify the crime had to "substantially relate to the care of the client or the job for which the individual is being hired?"
- In a time when demand for caregivers is growing and we want to spend money and time recruiting caregivers into this field, the bill would make this more difficult.
- This bill may send a message to personal care workers that they are less trustworthy than other long-term care workers.
- This bill would create additional costs for agencies/providers, consumers and "the system." Providers are having problems maintaining current costs of operating businesses based on low reimbursement rates.

Please don't hesitate to contact the following WPSA representatives for further information or discussion in regards to this bill:

Jean Rumachik, WPSA President  
262-637-9128 E-MAIL: [jean.rumachik@sai-inc.org](mailto:jean.rumachik@sai-inc.org)

Michael Blumenfeld, WPSA Lobbyist  
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Gerry Born, WPSA Legislative Chair  
608-698-6500 E-MAIL: [bornger@charter.net](mailto:bornger@charter.net)

Thank you for your time and consideration.